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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**RIN 0648-BF36**

**Fisheries of the Exclusive Economic Zone Off Alaska; Observer Coverage Requirements for Small Catcher/Processor in the Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of fishery management plan amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 112 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). If approved, Amendments 112 and 102 would modify the criteria for NMFS to place small catcher/processors in the partial observer coverage category under the North Pacific Groundfish and Halibut Observer Program (Observer Program). Under Amendments 112 and 102, the GOA and BSAI FMPs would each be amended to allow certain

catcher/processors with relatively small levels of groundfish production to be placed in the partial observer coverage category. Amendments 112 and 102 are intended to promote the goals of the BSAI and GOA FMPs and to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

**DATES:** Submit comments on or before [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2015-0114, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0114*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action (collectively the “Analysis”) are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Eich, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries of the GOA under the GOA FMP. NMFS manages the groundfish fisheries of Bering Sea and Aleutian Islands under the BSAI FMP. The Council prepared the GOA FMP pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). Regulations implementing the GOA FMP appear at 50 CFR 679.

The Magnuson-Stevens Act in section 304(a) requires that each regional fishery management council submit an amendment to a fishery management plan for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act in section 304(a) also requires that the Secretary, upon receiving an amendment to a fishery management plan, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. The Council has submitted Amendment 112 to the BSAI FMP and

Amendment 102 to the GOA FMP to the Secretary for review. This notice announces that proposed Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP are available for public review and comment.

Amendments 112 and 102 to the FMPs were adopted by the Council in June 2015. If approved by the Secretary, Amendments 112 and 102 would amend Section 3.2.4.1 of the BSAI and GOA FMPs to state that catcher/processors would be subject to full observer coverage requirement with some exceptions specified in regulations. To be consistent with current terminology, Amendments 112 and 102 would replace references to "less than 100 percent" and "greater than or equal to 100 percent" with "partial" and "full," respectively, in Section 3.2.4.1 of both the GOA and BSAI FMPs. Additionally, the Amendments would make minor technical edits and modifications in terminology in Section 3.2.4.1 of the GOA and BSAI FMPs to conform to current NMFS style guidelines. These minor technical edits and modifications in terminology are not substantive. Amendments 112 and 102 would also amend Appendix A to the GOA and BSAI FMPs to list the date that the Amendments are implemented, if approved, in chronological order.

The objectives of Amendments 112 and 102 are to 1) refine the balance between observer data quality from the fishery and the cost of observer coverage to catcher/processors with limited groundfish production relative to the rest of the catcher/processor fleet by allowing those catcher/processors with limited production to be placed in the partial observer coverage category based on contemporary groundfish

production amounts; and 2) implement this exception without altering the full observer coverage requirements for all trawl catcher/processors and catcher/processors in a catch share program.

### **Background on the Observer Program**

Regulations implementing the Observer Program allow NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the BSAI and GOA groundfish and halibut fisheries. The Observer Program was implemented in 1990 (55 FR 4839, February 12, 1990). In 2012, NMFS restructured the funding and deployment systems of the Observer Program (77 FR 70062, November 21, 2012). Since implementation of the restructured Observer Program in 2013, vessels, shoreside processors and stationary floating processors participating in the groundfish and halibut fisheries off Alaska are placed in one of two observer coverage categories: 1) partial observer coverage category or 2) full observer coverage category.

In the full observer coverage category, vessel operators obtain observers by contracting directly with observer providers. Operators of vessels in the full observer coverage category pay the observer provider for each day the observer is on board the vessel, including days that the vessel is travelling to or from the fishing grounds but not fishing.

NMFS deploys observers on vessels in the partial observer coverage category according to a statistical sample design based on an annual deployment plan developed in consultation with the Council. Vessels in the partial observer coverage category are

required to carry observers only on fishing trips selected at random pursuant to the statistical sample design. Instead of paying for each day an observer is on board, NMFS assesses a fee equal to 1.25 percent of the ex-vessel value of the retained groundfish and halibut landed by vessels in the partial observer coverage category. NMFS uses these fees to establish a Federal contract with an observer service provider to deploy observers in the partial observer coverage category. Under this structure, observer coverage funding is based on the number of days a vessel operates (full observer coverage category) or on the ex-vessel value of a vessel's retained catch regardless of the amount of time the vessel is covered by an observer (partial observer coverage category).

Under the restructured Observer Program, almost all catcher/processors were assigned to the full observer coverage category to obtain independent estimates of catch, at-sea discards, and prohibited species catch (PSC) to reduce the potential for introducing error into NMFS' catch accounting system (as described in the proposed rule: 77 FR 23326, April 18, 2012).

The restructured Observer Program provided for three limited exceptions for catcher/processors to be placed in the partial observer coverage category in recognition that the cost of full observer coverage would be disproportionate to total revenues for some small catcher/processors. First, the restructured Observer Program provided an exception (specified at the current § 679.51(a)(2)(v)) that applies to "hybrid" vessels less than 60 feet length overall (LOA) that acted as both a catcher vessel and a catcher/processor in the same year in any year from 2003 through 2009. Second, the

restructured Observer Program provided an exception from full coverage (specified at the current § 679.5(a)(2)(v)) if a catcher/processor had an average daily production of less than 5,000 lb (2.3 mt) round weight equivalent in its most recent full calendar year of operation from 2003 through 2009. Third, the restructured Observer Program provided an exception from full coverage (specified at § 679.5(a)(2)(iv)(B)) if a catcher/processor did not process more than one metric ton round weight of groundfish on any day in the immediately preceding year.

The first two exceptions are based on a vessel's activity between 2003 and 2009. A vessel that started processing after 2009 could never qualify to be placed in the partial observer coverage category under either of these exceptions. The first two exceptions permanently placed a vessel in the partial observer coverage category. These exceptions have no provision to review the production of a catcher/processor placed in the partial observer coverage category on an ongoing basis and remove them from the partial observer coverage category if their production increases. Out of approximately seventy catcher/processors in the Observer Program, three catcher/processors have qualified for, and elected to be assigned permanently to the partial observer coverage category under these two exceptions (Section 2.1.1 and Table 2 of the Analysis).

The third exception, the one metric ton exception, is theoretically open to any catcher/processor that began production after 2009. However, in reviewing production data from 2008 through 2014 for this action, NMFS found no active catcher/processor (i.e., a catcher/processor which did any processing in a year) that processed one metric

ton or less on every day during a year (Section 2.1.1 of the Analysis). One catcher/processor qualified for placement in the partial observer coverage category in 2015 under the one metric ton exception, but that catcher/processor processed nothing in 2014 and therefore processed one metric ton or less on every day in 2014 (Section 2.1.1 of the Analysis).

### **Need for Amendments 112 and 102 to the BSAI and GOA FMPs**

Beginning with comments on the proposed rule for the restructured Observer Program, industry participants asked that the final rule for the restructured Observer Program allow NMFS to place catcher/processors with limited production in the partial observer coverage category. In response to these comments, NMFS stated in the final rule for the restructured Observer Program (77 FR 70062, November 21, 2012) that neither the Council nor NMFS had analyzed the situation of small catcher/processors that began production after 2009. NMFS explained that if these industry participants wished to be considered for placement in the partial observer coverage category, the Council and NMFS would need to make these changes through a separate rulemaking process.

Industry participants subsequently sought to change in the rules for placement of catcher/processors in the partial observer coverage category. The Council and NMFS reviewed and developed a series of analyses that resulted in this proposed action. The history of this action is described in detail in Section 1.2 of the Analysis.

Data on past production identified a small number of catcher/processors that processed a small amount of groundfish relative to the rest of the fleet. The Council and



NMFS concluded that these vessels were paying, or would pay, a disproportionate amount for full observer coverage relative to the amount these vessels had processed, or would be likely to process. The Council and NMFS concluded that the cost of full observer coverage might be discouraging beneficial activity, such as processing sablefish in remote fishing grounds in the Aleutian Islands or processing by small jig gear vessels.

As noted earlier, Amendments 112 and 102 would amend Section 3.2.4.1 of the BSAI and GOA FMPs to state that catcher/processors would be subject to full observer coverage requirements with some exceptions, as specified in regulations. The proposed rule describes the regulations that would assign catcher/processors to either the full or partial coverage categories. Those regulatory provisions are not repeated here.

### **Public Comments**

NMFS is soliciting public comments on proposed Amendments 112 and 102 to the FMPs through the end of the comment period (see **DATES**). A proposed rule that would implement Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP is intended to be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule pursuant to the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendments 112 and 102 to the BSAI and GOA FMP in order to be considered in the approval/disapproval decision on the amendment. NMFS will consider all comments on the Amendments received by the end of the comment period, whether specifically

directed to the FMP amendments or the proposed rule, in the approval/disapproval decision.

Comments received after the end of the comment period may not be considered in the approval/disapproval decision on Amendments 112 and 102. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 14, 2015

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Galen R. Tromble

Acting Director,

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